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APPENDIX

JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1967

No. 898

JOHNNY SABBATH, PETITIONER

v.

UNITED STATES, RESPONDENT

**ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT**

**PETITION FOR CERTIORARI FILED AUGUST 25, 1967
CERTIORARI GRANTED DECEMBER 11, 1967**

Supreme Court of the United States

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TABLE OF CONTENTS

	Page
Docket Entries	1
Proceedings in the United States District Court for the Southern District of California	2
Indictment	2
Excerpts From Transcript of Trial	4
Verdict	50
Judgment and Commitment	51
Notice of Appeal	53
Proceedings in the United States Court of Appeals for the Ninth Circuit	54
Opinion of the Court	54
Judgment of the Court	59
Order Extending Time To File Petition For Writ of Certio- rari	60
Order Granting Petition for Writ of Certiorari	61

[fol. A]

DOCKET ENTRIES.

Proceedings in the United States District Court for the
Southern District of California

Indictment	Filed March 2, 1966
Transcript of Trial	Recorded June 16, 1966
Verdict	Filed June 16, 1966
Judgment and Commitment of the United States District Court for the Southern Dis- trict of California	Entered July 25, 1966
Notice of Appeal	Filed July 25, 1966

Proceeding in the United States Court of Appeals
for the Ninth Circuit

Opinion of the Court	Filed June, 27, 1967
Judgment of the Court	Entered June 27, 1967

Order Extending Time to File Petition for Writ of Certiorari	Entered July 28, 1967
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Order Granting Petition for Writ of Certiorari	Entered December 11, 1967
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[fol. B]

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

February, 1966, Grand Jury—Southern Division

No. 36238-SD

[File endorsement omitted]

UNITED STATES OF AMERICA, PLAINTIFF

vs.

WILLIAM EDWARD JONES, (aka William Dale)
JOHNNY SABBATH, DEFENDANTS

INDICTMENT—Filed March 2, 1966
(U.S.C., Title 21, Section 174;
Smuggling and concealing cocaine)

The Grand Jury charges:

COUNT ONE

On or about February 19, 1966, in San Diego County within the Southern Division of the Southern District of California, defendants WILLIAM EDWARD JONES, also known as William Dale, and JOHNNY SABBATH, knowingly imported and brought approximately one ounce of cocaine, a narcotic drug, into the United States from Mexico, contrary to Title 21, United States Code, Section 173.

[fol. C]

COUNT TWO

(U.S.C. Title 21, Sec. 174)

On or about February 19, 1966, in San Diego County, within the Southern Division of the Southern District of California, defendants WILLIAM EDWARD JONES, also known as William Dale, and JOHNNY SABBATH,

knowingly concealed, and facilitated the transportation and concealment of approximately one ounce of cocaine, a narcotic drug, which, as the defendant(s) then and there well knew, had been imported and brought into the United States contrary to law.

A TRUE BILL

/s/ [Illegible]
Foreman

MANUEL L. REAL
United States Attorney

/s/ [Illegible]
Asst. United States Attorney

[fol. 2]

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

HONORABLE FRED KUNZEL, Judge Presiding

No. 36238-SD-K-Criminal

[File endorsement omitted]

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

JOHNNY SABBATH, DEFENDANT-APPELLANT

REPORTERS' TRANSCRIPT ON APPEAL—June 16, 1966

MANUEL L. REAL, United States Attorney, For the
Plaintiff-Appellee

BY: SHELBY GOTT, Assistant United States Attorney,
325 West F Street, San Diego, California, 92101
293-5610

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[fol. 3]

APPEARANCES

MANUEL L. REAL, United States Attorney

BY: SHELBY GOTT, Assistant United States Attorney,
For the plaintiff, 325 West F Street, San Diego, Cali-
fornia 92101, 293-5610

JOHN J. BRADLEY, For the Defendant Sabbath, 215
West Fifth Street, Los Angeles, California, 90013,
629-2261

* * *

[fol. 8] MR. BRADLEY: May we approach the Bench, your Honor?

THE COURT: Yes, Mr. Bradley.

(The following proceedings were had at the Bench between Court and counsel with defendant present, outside the hearing of the jury.)

MR. BRADLEY: Your Honor, I previously asked Mr. Gott if there were any recordings that would be used in this case, and he told me no, that the customs agents do not make recordings. I notice in their report that they say that they monitored a conversation and have a recording.

MR. GOTT: I do not recall the discussion, and if I told you there were not any recordings, at the time I believed there weren't any. I do now know after reading this file last night that there were some recordings of conversations. The recordings didn't turn out, as they seldom do, but—

MR. BRADLEY: Well, there certainly are some. You say didn't turn out as they often don't.

MR. GOTT: Well, you are certainly welcome to them.

MR. BRADLEY: Well, are they going to be used?

MR. GOTT: No, they will not be used in this trial.

MR. BRADLEY: Well, that solves it.

* * * *

[fol. 13]

COLLOQUY BETWEEN COURT AND COUNSEL

THE COURT: May it be stipulated, Counsel, that the contents of Exhibit 1 for identification, which is a rubber contraceptive is the rubber contraceptive which was taken from the person of William Dale, also known as William Edward Jones, by Customs Inspector Claude Yates on February 19th, 1966—

MR. GOTT: So stipulated.

THE COURT: Just a moment—and that if a chemist were called, the chemist would testify that the contents of [fol. 14] the rubber contraceptive are in fact cocaine?

MR. BRADLEY: So stipulated, your Honor.

THE COURT: Mr. Gott, is that agreeable?

MR. GOTT: That is agreeable.

THE COURT: Is that agreeable with you, Mr. Sabbath?

DEFENDANT SABBATH: Yes, it is, your Honor.

THE COURT: All right.

* * *

WILLIAM JONES,

called as a witness by and on behalf of the government,
having been first sworn was examined and testified as
follows:

THE CLERK: Would you please be seated.

State your name, please.

THE WITNESS: William Jones.

DIRECT EXAMINATION

BY MR. GOTT:

Q Mr. Jones, did you return from Mexico to the United
[fol. 15] States on or about February 19th, 1966?

A Yes, I did.

Q And when you returned, did you have some sort of
a package on your person?

A Yes.

Q And where was that package?

A In my shorts.

THE COURT: May the witness be shown Exhibit 1
to see if that resembles the package that he had, the inner
contents of the envelope, please.

(Clerk handed exhibit to the witness.)

BY MR. GOTT:

Q Just look at it and—

A Yes.

Q Now, were you arrested at the port of entry there
after this was found on your person?

A Yes, I was.

Q Now, where did you get that package, Exhibit 1 for identification?

A Got it from Johnny.

Q And who is "Johnny"? Do you see him in the courtroom?

A Yes.

Q And which one is he?

A The fellow sitting over there (indicating).

[fol. 16] THE COURT: The record may show he has identified the defendant.

BY MR. GOTT:

Q Now, where did you get this from Johnny?

A Up at the race track.

Q How did you get to Mexico?

A Johnny took me.

Q How were you going to get back to Los Angeles?

A Catch a bus or a plane.

Q And did Johnny tell you what you were to do with Exhibit 1, the package, when you got back to Los Angeles?

A Bring it to him.

THE COURT: Speak up, please.

THE WITNESS: Bring it to him.

BY MR. GOTT:

Q Did you deliver the package to him?

A Yes, I did.

THE COURT: Speak up, would you please?

THE WITNESS: Yes.

THE COURT: All right.

BY MR. GOTT:

Q I will ask the question again. The jury may not have heard your answer.

Did you deliver the package to him?

A Yes, I did.

[fol. 17] Q And when you delivered it, did you go alone or with someone else?

A Four or five officers.

Q And were these customs officers?

A Federal agents, I know. I don't know—yes.

Q Well, is this one of them here, this gentleman here seated at counsel table, Mr. Gore (indicating)?

A Yes.

Q And some other fellows?

A Yes.

Q Where did you deliver it to Johnny at?

A At his house.

Q And do you know what address that is?

A It's on 90th. I'm not sure of the correct number.

Q Prior to delivering it, did you make a phone call to Johnny?

A Yes, I did.

Q And where did you get the number that you called him at?

A It was in my wallet.

Q And did any of the officers listen in on the phone conversation?

A Yes.

(Discussion off the record between Mr. Gott and Mr. Gore out of the hearing of the jury.)

[fol. 18] BY MR. GOTT:

Q Now, when you placed this phone call in the presence of the officers to Johnny, did someone answer on the phone?

A Yes.

Q And did you recognize the voice of the person that answered?

A Yes.

Q And who was that person that answered?

A Johnny.

Q And do you recall now what you said to Johnny and what he said to you at that phone call?

A Well, no, not completely. I remember—I called—I told him I had his thing for him and that I was going to bring it up there.

Q What further did he say if anything?

A I don't remember too well.

Q Well, did he say anything about whether you had trouble getting through the port or anything like that?

A I think so, yes.

Q Did he say whether or not he had been searched or stopped when he came through the port?

A I think so.

Q Now, when you got up to his house there and the officers with you, did you go in his apartment alone, or did you go with someone else?

[fol. 19] A I went alone.

Q And when you got in there, what was said, if anything?

A Well, a lady answered the door. So I asked her was Johnny home, and she said yes, he was back in the bedroom.

So I asked *him* could I speak to him alone. And he come up to the living room. And I told him, here's his thing, and—

THE COURT: Just speak a little slower and keep your voice up, would you please. We have to hear what you are saying.

BY MR. GOTT:

Q You told him—

A He came up to the living room. We came up to the living room. I told him I got his thing, was kidding with him, and I asked him—he thought maybe I'd left town or something like that.

Q You had been delayed a little bit, hadn't you?

A Yes, I had.

* * *

[fol. 20] BY MR. GOTT:

Q What did he say?

A He said he had been stopped over at, across the border some way, something like that.

Q When you went down with him, how did you go?

A We went in his car.

Q And who drove?

A He did.

Q And what kind of a car was it?

A Sixty-five Cadillac convertible.

Q Do you know what color it was?

A Blue.

Q Had you been in his apartment before on other [fol. 21] occasions?

A Yes, I had.

Q Had you seen this woman that answered the door before?

A No, I hadn't.

Q Had you seen anyone else in the apartment besides Johnny on other occasions?

A Yes, various people at different times.

BY MR. GOTT:

Q Now, did there come a time that you did give the thing to Johnny?

A Yes, I gave it to him. As soon as I went in. And he came up to the front room.

Q Now, prior to your entering, had any kind of a radio device been placed on your person?

A Yes, it had.

Q Where was Johnny sitting or standing—Where was he in the room when you gave the thing to him?

A Over by the couch.

Q And did he stand up or sit down then?

[fol. 22] A He sit down on the couch after I give it to him.

Q And where did you sit, if you did?

A In the chair, beside the couch.

Q Is there anything between the chair and the couch?

A Well, they are—the chairs at the end of the couch. It's pretty close together, and there's a table in front of the couch.

Q Now, did the officers come in after that?

A They came in just about at that point.

Q Were you to get anything for bringing this package to Johnny?

A Yes.

Q And what?

A Hundred dollars.

Q Did you get the hundred dollars?

A Too much confusion. Forgot about it.

Q In other words, the officers' coming in sort of interrupted your collecting your money?

A Yes.

MR. GOTT: Nothing further, your Honor.

THE COURT: Mr. Bradley?

MR. BRADLEY: Yes, your Honor.

CROSS EXAMINATION

BY MR. BRADLEY:

[fol. 27] Q What day was it that you received this package from Johnny in Mexico?

[fol. 28] A Saturday night, I think? I'm not sure definitely.

Q Was it in the daytime or the evening?

A In the evening.

Q It wasn't in the afternoon?

A No.

Q And where were you at this time in Mexico?

A I was in Mexico. Up at the race track.

Q Was anybody else with you—

A No.

Q —other than Johnny?

A No.

Q You traveled to Mexico in his automobile?

A Yes, I did.

Q After you arrived in Mexico, where did Johnny drive the automobile?

A He drove it to the parking lot on the race track.

Q After you crossed the border, he drove directly to a parking lot at the race track?

A Yes.

Q And what did you do then?

A I sat in the car.

Q And what happened then?

A He got out and went over there, back by the hotel.

Q He left you sitting in the car?

A Yes.

[fol. 29] Q And then what happened?

A He come back and give me the package.

Q And then what happened?

A Then he left.

Q Did you go in the race track?

A Yes.

Q Alone?

A Yes.

Q And Johnny left?

A Yes.

Q Drove his car away?

A Yes.

Q And did you see him again in Mexico?

A No.

Q When did he agree to give you the hundred dollars to bring this package back to the United States?

A Just before we left Los Angeles.

Q Was that at your suggestion or at his suggestion?

A Well, it's not exactly—I wouldn't say it was his suggestion, I wouldn't say it was my suggestion. I was telling him about my bad luck and the condition I was in. He told me to come on, go with him; he might could help me out a little bit.

Q Did he tell you where he was going?

A Yes.

[fol. 30] Q What did he say?

A Said he's going to Tijuana.

Q And did he tell you he had been there before?

A No, he didn't.

Q Did you ask him if he had been there before?

A No. I don't, I don't recall whether I did or not.

Q Did you ask him why he was going to Tijuana?

A No.

Q But he was going to help you out?

A Yes.

Q Going to help you out by playing the dog races?

A No, he wasn't going to help me out by playing the dog races.

Q Did you ask him how he was going to help you out?

A Yeah—well, he told me.

Q He what?

A He finally told me.

Q Well, what did he say?

A He told me he wanted me to bring something back for him.

Q And what did you say to that?

A I think I asked him what. I can't remember the complete conversation.

Q You only think you asked him what?

A Well, I'm almost sure I would have asked him what.

[fol. 31] Q Well, what did he say?

A I can't definitely say.

Q Will you repeat that again?

A I cannot definitely say.

Q Well, tell us to the best of your recollection.

A I think he said a package.

Q A package?

A Yes.

Q Did you ask him what was going to be in the package?

A I'm almost sure I did, yes.

Q Well, what did he say to that?

A I think he said cocaine.

Q Cocaine?

A Yes.

Q Now, do you know Johnny's address?

A I know his house.

Q You don't know his address?

A No, I don't.

* * * *

[fol. 34] Q Then when you got to the apartment, and you saw Johnny, who had offered you a hundred dollars — You didn't even ask him for the hundred dollars, did you?

A No, I really didn't.

Q You forgot all about it?

A Yes, I forgot it.

Q Now, you didn't come up to the customs officers and tell them that you were, wanted to perform some civic duty and report to them that Johnny had offered you a hundred dollars to bring this package to him, did you?

A No, I didn't. Not, not—no, I didn't walk up to them and say that, no.

Q They stopped you, didn't they?

A Yes, they did.

[fol. 35] Q You didn't tell them you had any package of cocaine, did you?

A No, I didn't.

Q They had to search you to find it; isn't that right?

A Yes.

Q And after they searched you and found it, that is when you started to tell them about Johnny; right?

A No.

Q When did you start to tell them about Johnny?

A Oh, I imagine it was about three or four hours later.

Q Three or four hours later?

A Yes.

Q You had thought it over a little bit; right?

A Yes.

Q Did the officers tell you about this circumstance that—withdraw it.

What did the officers say to you that caused you to tell them about Johnny?

A I don't remember now. I can't recall the conversation with the officers just at that time.

Q You don't remember?

A No, I don't.

Q Tell us what they said, the substance of what they said to you.

A (No response.)

[fol. 36] Q Well, let's put it—

A Well, they asked me was I alone and—did I come by myself and—

Q What did you tell them?

A First I told them yes, I came by myself, at first.

Q At first you told them a lie; right?

A Yes.

Q All right.

Then when did you change your story?

A Why did I?

Q When did you? How long after that?

A Oh, about ten, twenty minutes. Wasn't too long.

Q Twenty minutes later you told them you came with Johnny?

A Yes.

Q What else did you tell them about Johnny?

A I can't remember.

Q Well, did they ask you anything more about him?

A They asked me quite a few questions.

Q They asked you where he lived?

A Yes, I'm quite sure they did.

Q Well, you volunteered the information that Johnny asked you to come down there and bring this package back; is that right?

A Yes, I did.

[fol. 37] Q And did they tell you anything that caused you to do that?

A No, they didn't.

Q You just voluntarily stated to them, "Look, fellows, I want to tell you; I came down here to get this package for Johnny and bring it back"; right?

A No—well, they told me that they knowed I wasn't by myself, so I might as well tell the truth.

Q You weren't there by yourself so you might as well tell the truth?

A Yeah.

Something of that sort.

Q Did anybody say anything to you about whether you would be prosecuted in this case if you implicated Johnny?

A Rephrase that. I don't understand.

Q Did anybody tell you you would not be tried for carrying the package across the border if you implicated Johnny?

A No.

Q Nobody told you that?

A No.

Q Are you being prosecuted?

A I'm quite sure.

Q You are?

A Yes.

[fol. 38] Q Now, the officers placed some type of radio device on your body before you went to Johnny's apartment; is that right?

A Yes, they did.

Q And they told you they were going to listen to the conversation?

A Yes.

Q And did they tell you what to say to Johnny when you got to the apartment?

A No, all they did was hook me up.

Q Hook you up.

But you knew what you were going to say, didn't you?

A No, I didn't.

Q Well, you knew why you were going to the apartment?

A Yes, but I didn't know what I was going to say.

Q Well, you knew you had this package with you that you were going to give to Johnny?

A Yeah.

Q And you knew that the officers were following you and going to listen to the conversation;—

A Yes.

Q —you knew that, didn't you?

A Yes.

Q And you wanted to help out, didn't you?

A Yes.

[fol. 39] Q And you tried your best to help out, didn't you?

A Yes.

Q And you put the package under the pillow, didn't you, on the sofa?

A No.

Q You didn't?

A No.

Q When you gave Johnny the package, you didn't ask him for the hundred dollars then, did you?

A No, I didn't.

Q Did you still have your \$50 with you?

A Yes, I had my money with me.

Q You hadn't spent any of it?

A Maybe a dollar or fifty cents or something. I don't know.

Q Did the officers take your money away from you?

A At one time they took my money and—when they first arrested me, they took everything I have.

Q And then when you told them that you would lead them to Johnny with the package, they gave you your money back?

A Yeah.

Well, in the, at first they wasn't going to give it back, but I said, "I think I'm—should have my money, my stuff on me if I'm going to go up there with the package."

Q And when you arrived at this apartment, a girl [fol. 40] answered the door; you didn't give Johnny the package then, did you?

A Not in front of the lady, no.

Q No, you asked to be alone, didn't you?

A Yes.

Q And when the girl left the front room, then you gave the package; right?

A Yes.

Q In this telephone call, did Johnny tell you he had been stopped at the border?

A I think so. He said something of that sort.

Q Of that sort?

Didn't he tell you he was arrested in Mexico?

A He said something like that, yes.

Q Something like that?

A Yes.

Q When the officers came in the apartment, did they do anything with you?

A Yes, they did.

Q What did they do?

A Took me outside.

Q And you had a conversation with them, didn't you?

A I, I. I was too nervous to say anything.

Q Too nervous?

A Yes, I was nervous.

[fol. 41] Q What were you nervous about?

A Well, I didn't ever did nothing like that before.

Q You mean you have never taken the officers to somebody that you have told them was pushing, dealing in narcotics; you have never done that before?

A No. No.

Q Or it made you nervous this time?

A Yes, it made me awful nervous.

Q You were working with the officers, weren't you?

A That ain't nothing. I was still scared.

Q I am sorry; I can't understand you.

A I was still scared.

Q You were still scared?

A Yeah.

Q Scared of what?

A I don't know.

Q They had already told you you wouldn't be prosecuted, hadn't they?

A No, they haven't told me that yet.

Q They haven't?

A No.

Q Have you ever been convicted of a felony?

A No, I haven't.

Q Never?

A Never.

[fol. 42] MR. BRADLEY: I have nothing further, your Honor.

MR. GOTT: Nothing further from this witness at this time, your Honor.

THE COURT: All right. You may step down.

(The witness left the stand.)

MR. GOTT: Call Mr. Hopkins, customs agent.

DAVID W. HOPKINS,

called as a witness by and on behalf of the government, after having been first sworn, was examined and testified as follows:

THE CLERK: Please be seated.

Will you state your name, please.

THE WITNESS: My name is David W. Hopkins.

DIRECT EXAMINATION

BY MR. GOTT:

Q Mr. Hopkins, who do you work for?

A I work for the United States Customs Agency Service in Los Angeles.

Q In what capacity?

A I'm a Customs Agent.

Q Have you ever had anything to do with the case, the Johnny Sabbath matter?

A Yes, I did.

[fol. 43] Q And when did you first have something to do with that matter?

A On the night of February 19th, 1966.

Q When did you first meet Mr. Sabbath?

A On approximately 7:30 p.m. on February 20th, 1966.

Q And where did you meet him?

A At his apartment.

Q And do you know now where that is?

A Yes, I do.

Q And where is it?

A It's 1115 West 90th Street, Apartment No. 6.

MR. BRADLEY: Pardon me one second.

THE WITNESS: As best I can remember.

[fol. 44] Q Then, Mr. Hopkins, you first saw the defendant then at his apartment on 90th Street in Los Angeles on a Sunday?

A Yes, sir.

Q On the 20th of February?

A Yes, sir.

Q Did you or did you not participate in placing a radio transmitter device on the witness who just testified?

A I did, sir.

Q And where did this take place?

A I don't remember the exact location, but it was in a parking lot somewhere near 90th Street. I don't recall the exact location.

Q Now, what happened directly after that, if anything?

[fol. 45] A Well, after placing the electronic device on Mr. Jones, Mr. Jones and another fellow, another CPI by the name of Mr. Honore proceeded to Mr. Sabbath's residence. And the other units that were present that night proceeded to go to that same locale.

Q And were you in one of the other units then?

A Yes, I was. CPI Gore was with me.

Q CPI Gore is the gentleman seated at counsel table (indicating)?

A Yes, sir.

Q What is a CPI?

A That's a Customs Port Investigator.

Q And Mr. Honore is a Customs Port Investigator, too?

A That is right.

Q Now, did you monitor a conversation on the radio?

A Yes, sir.

Q And do you know now what that conversation was?

A Parts. I—I'd like to explain something here.

The electronics device was working. However, there was a stereo in the apartment, and it was turned on quite loud, and I was able to only hear parts of the conversation.

Q Will you tell us the parts that you heard.

A Yes.

Well, as I heard the knock on the door, and I heard a woman answer the door—

[fol. 46] Q Now, could you see—

A No.

Q —Mr. Jones knock on the door at that time?

A I could not see this. From my location, no.

Q Proceed then with what else happened.

A Then there was just a general greeting; I don't recall the exact words. Anyway, a lady answered the door, and I recognized Mr. Jones' voice asking if Johnny was in.

She says, "Yes; just a minute."

And I heard steps. The next thing I heard was Mr. Sabbath—or another voice; I did not know if it was Mr. Sabbath at the time—it was a male voice—talking to Mr. Jones.

This male voice stated, "Did you have any"—something to the effect, "Did you have any problems getting through the line?"

And Mr. Jones replied, "No, hunh-unh, no problems."

Then the music—it was kind of a—the music would get loud; and then it would slack off, and loud again, and this faded off for a few seconds, and there was general conversation—about the trip, how he got, how Jones got to Los Angeles; this type conversation.

And then I heard footsteps, and they walked over—it appeared to go towards the window. We had another agent that reported their progress in the room.

Q And did you hear anything further on the elec-
[fol. 47] tronic box?

A Well, I, I heard a part of a conversation; something about—package. I heard the word "package" mentioned, and I heard a reply.

This, this is about all I could gather from that, but I definitely heard the word "package" from one voice, and the other voice replied something, but the music again was fairly loud and I could not exactly make it out.

Q Now, how long after you heard the knock on the door was it that you saw Mr. Sabbath?

A I would say approximately five minutes.

Q And tell us exactly what happened just prior to seeing Mr. Sabbath, if anything.

A Yes, sir.

Since we were not getting real good reception on the electronic device due to the loud music, we decided it was time to go into the apartment.

So Agent Dennis, CPI Gore and Customs Port Investigator Carter and I proceeded to the apartment door.

I knocked on the door, waited a few seconds, and no answer came from within, so I opened the unlocked door and came into the apartment.

As I entered the apartment, Mr. Jones was setting in a chair next—which was located on the, on a wall—if I may explain this—

[fol. 48] MR. GOTT: Yes.

May the witness draw this on the chart here for the jury, your Honor?

THE COURT: All right.

MR. GOTT: The location of the furniture.

(The witness stepped down from the stand.)

THE COURT: Do you have a grease pencil?

THE WITNESS: Yes, sir (diagraming).

THE COURT: Make the drawing and then the explanation after you have finished it.

THE WITNESS: This—

THE COURT: No, not "this." Mark it.

THE WITNESS: Here's the front door right here (indicating)—

THE COURT: Mark that with an "F".

THE WITNESS: An "F"? Okay (indicating).

There's a closet over here (indicating).

THE COURT: Mark that with a "C".

THE WITNESS: "C" (indicating).

This is the living room here (indicating). It's a fairly large living room. There is a—this is a little bit out of scale, but there is also a breakfast bar, something like this here (indicating).

This is the kitchen; the couch is located against this wall; there is a window—

[fol. 49] THE COURT: Against the left-hand wall.

THE WITNESS: Against the left-hand wall.

This is the couch (indicating).

There's a window here and a chair was setting here (indicating).

As I came in the door, I came in this way, was standing here (indicating).

I think this is all I need to draw right now.

THE COURT: All right.

(The witness resumed the stand.)

BY MR. GOTT:

Q Now, will you—you might remain down there a moment—

(The witness stepped down from the stand.)

BY MR. GOTT:

Q Tell us where Mr. Sabbath was and where Mr. Jones was when you first saw them.

A Mr. Jones was sitting on, in this chair right here (indicating).

Q Make a "J" there then for "Jones."

A (Indicating).

Q And where was Mr. Sabbath?

A Mr. Sabbath was sitting on this end of the couch (indicating)—

THE COURT: On the north end of the couch.

[fol. 50] THE WITNESS: On the north end of the couch.

I believe that the couch had two large cushions and he was sitting approximately in this position here (indicating).

BY MR. GOTT:

Q Put an "S" there then, would you please.

A (Indicating).

Q For "Sabbath."

Now, you can resume the witness stand if you don't mind.

A (Resuming the stand) There's also a coffee table in front of the couch and some other furniture in there, but I—and also I might explain, too, the stereo—I should place the location of the stereo.

Q Yes. Where was the stereo?

A (Stepping down from the witness stand) This is the reason why that the music was so—the stereo was located right on this wall right here (Indicating).

Q Was it playing when you came in there?

A Yes, sir, it was (resuming the stand).

Q Now, tell us exactly what you observed if anything concerning the two persons you saw there.

A Yes, sir.

I was the first one into the apartment. When I entered the apartment, I immediately was going to arrest [fol. 51] the occupants of the apartment. As I came around the corner from the door, I saw Mr. Sabbath

sitting on the couch, and his hand was placed between the cushions and his—he made a—his hand was kind of cupped like this (indicating), and he appeared to be moving his hand towards, underneath his body, below the cushion.

And then just a fraction of a second later, he pulled his hand out and placed it on his lap.

And then I told them that they were under arrest. I went to the couch, removed Mr. Sabbath from the couch, placed him against the wall, did the same with Mr. Jones, conducted a very brief search of their persons for weapons, and then backed off.

I saw Customs Port Investigator Honore immediately proceed to the couch and remove the north cushion—or I believe it would be north—anyway, where Mr. Sabbath was sitting on, that same cushion. He picked it up, and there was a rubber contraceptive laying on that cushion.

MR. GOTT: May the witness be shown Exhibit 1.

(Clerk complied.)

(Discussion off the record between Mr. Gott and Mr. Gore out of the hearing of the jury.)

BY MR. GOTT:

Q Did the package you saw resemble in any way Exhibit 1?

[fol. 52] A Yes, it did.

[fol. 54] MR. GOTT: Your Honor, at this time I would offer a verbal stipulation from counsel and the defendant that Mr. Johnny Sabbath was in Mexico on Friday the 18th, Friday night, the night of Friday the 18th of February, 1966.

MR. BRADLEY: We will so stipulate, your Honor.

THE COURT: Is that agreeable, Mr. Sabbath?

DEFENDANT SABBATH: Yes, your Honor.

THE COURT: All right.

MR. GOTT: Nothing further from this witness, your Honor, at this time.

CROSS EXAMINATION

BY MR. BRADLEY:

Q Agent Hopkins, you talked with Mr. Jones at some time prior to this arrest, did you not?

[fol. 55] A Very briefly.

Q Well, when was it that you talked to him?

A In the parking lot on the—on February 20th.

Q You had information from some of your fellow officers in regard to what Jones had told them?

A Yes, sir.

Q At the time you placed this radio device on his body, did you give him any instructions?

A I don't recall giving him any specific instructions.

Q Had Jones told you that Mr. Sabbath was going to give him a hundred dollars?

A No, he had not told me this.

Q But your fellow officers had told you that?

A Yes.

Q Did you make a search of Mr. Jones' person before you put the device on his body?

A Yes, sir.

Q Did you find any money on him?

A Not at the time that I conducted the search.

Q Did you find any money on him at the time you arrested him?

A Yes, I did.

Q What did you find?

A Fifty-some dollars.

Q He didn't have a hundred dollars?

[fol. 56] A No, he didn't have a hundred dollars.

Q And you conducted a search of the apartment?

A Yes, sir.

Q By the way, how was Mr. Sabbath dressed when you broke into the apartment?

A When we entered the apartment, Mr. Sabbath and a—had an undershirt on and some bright red boxer shorts.

Q That is all; he didn't have pants on?

A No, he did not.

Q When did you first meet Mr. Jones?

A I saw Mr. Jones—on February 19th, briefly.

Q Was that the first time?

A Yes, sir.

Q You didn't know him before that?

A No, sir.

Q Did you have a warrant for the arrest of anybody?

A In this case?

Q Yes.

A No.

Q Did any of your fellow officers have a warrant?

A No, sir. Not to my knowledge.

Q You tested this recording device of yours before you let Mr. Sabbath go to the apartment?

A Before Mr. Jones went to the apartment?

Q Mr. Jones went to Sabbath's apartment. Pardon me.

[fol. 57] A Yes, sir, we did.

Q And it was working satisfactorily?

A Yes, sir, it was.

Q And you were prepared to make a recording?

A Yes, sir, we were.

Q But because of the hi-fi playing or some electrical instrument in the apartment, you didn't make any recording; is that right?

A I think a, a recording was—was attempted.

Q Was attempted.

When you first broke into the apartment, what was the first thing you did?

A Upon entering the apartment, I had my gun drawn. I stood—just as I entered the living room, I was—I stood there and advised the occupants that they were under arrest.

* * *

[fol. 58] Q Were you the chief officer of this investigation, supervising it?

A At this particular portion of it, I was in charge.

Q And you had no warrant?

[fol. 59] A I did not.

Q You made up your mind you were going to arrest the occupant of this apartment?

A After hearing the conversation that I overheard on the electronic device, this, coupled with other information that I had access to.

Q Well, the other information you received from Jones; isn't that right?

A I received this information from other agents who had questioned Mr. Jones.

Q The other agents, customs agents; right?

A Yes, sir.

Q And they told you what Jones told them; is that right?

A That's correct.

MR. BRADLEY: I have nothing further, your Honor.

REDIRECT EXAMINATION

BY MR. GOTT:

[fol. 60] Q Did you find anything else in the apartment?

A I observed another agent find some items.

Q What?

A Besides Mr.—Mr. Honore found the—

MR. BRADLEY: I am going to object to this as improper rebuttal.

MR. GOTT: I will reopen on direct then, your Honor. I did overlook it.

THE COURT: All right. Go ahead.

THE WITNESS: Customs Port Investigator Al Honore found the small, a small package, rubber contraceptive under the cushion on the couch in the living room. He also found several small aluminum square tins, just pieces of, like tinfoil cut in squares in the kitchen, in a small drawer. And he found a quantity of small rubber balloons in the bedroom.

BY MR. GOTT:

Q Did you see any children in the house?

A I did not, sir.

Q Did you see any children's clothes in the closet?

A No, sir.

Q Did you find any money?

A Yes, sir, I did.

Q How much?

A It was approximately \$500.

[fol. 61] MR. GOTT: Nothing further, your Honor.
Strike that.

Q Did you see a 1965 blue Cadillac convertible in the vicinity?

A Yes, I did.

Q And where was that?

A This was located in the carport outside of the apartment.

MR. GOTT: Nothing further.

MR. BRADLEY: I have no further questions, your Honor.

May we approach the Bench again?

THE COURT: Yes.

You may step down.

(The witness left the stand.)

(The following proceedings were had at the Bench between Court and counsel with defendant present out of the hearing of the jury.)

MR. BRADLEY: Now, your Honor, in view of this officer's testimony, in view of this agent's testimony that he went to this apartment without a warrant, with the intention of arresting the occupants, and the only information that he is relying upon was the information given to him by Jones, and he, Jones, he had never seen before in his life, there is no evidence to establish whatsoever that Jones is a reliable informant, sufficient to justify [fol. 62] this officer's breaking into somebody's apartment without a warrant—

THE COURT: No, but what he heard over the radio transmitter confirmed what was told him.

MR. BRADLEY: Well, that is pure speculation that it confirms anything because all he testified to—

THE COURT: Well, I know, but isn't that sufficient?

MR. BRADLEY: Not pure speculation; he must have reasonable cause.

THE COURT: Well, I know, but from what Jones had told him, plus the fact that he heard this voice—

MR. BRADLEY: He only identified it as a voice, your Honor; he didn't say it was Sabbath.

THE COURT: I know, but—

MR. BRADLEY: Jones was doing his own talking for his own benefit to sustain his own story.

THE COURT: Yes, I know that, but he heard this voice say, "Did you have any problems getting through the line?"

MR. BRADLEY: That does not—

THE COURT: I know, but a voice said that. Then another individual added—then he heard something about a package.

MR. BRADLEY: But he didn't know whose voice it was.

THE COURT: But, as I say, I am going to deny the motion.

MR. BRADLEY: All right.

THE COURT: All right.

.(The following proceedings were had before the jury.)

[fol. 63] MR. GOTT: Move that Exhibit 1 be admitted into evidence.

MR. BRADLEY: No objection.

THE COURT: May the chart be marked Exhibit 2?

MR. GOTT: Yes, and Exhibit 2, the chart.

MR. BRADLEY: No objection.

THE COURT: May be received.

(Government's Exhibit No. 1 for identification received in evidence.)

(Chart marked Government's Exhibit No. 2 for identification and received in evidence.)

[fol. 64] JOHNNY L. SABBATH,

the defendant herein, called as a witness on his own behalf, having been first sworn was examined and testified as follows:

THE CLERK: Please be seated.

Would you state your name, please.

THE WITNESS: Johnny L. Sabbath.

DIRECT EXAMINATION

BY MR. BRADLEY:

Q Mr. Sabbath, where do you reside?

A I reside at 11808 New Hampshire.

Q Is that a residence or apartment?

A Apartment.

Q What apartment do you reside in?

A Fifteen.

Q And were you residing there on February the 20th?

A No.

Q Were you residing there on February the 19th?

A No.

Q Well, when did you start—Is this after the arrest, the different location?

A Yes, sir.

Q Where were you residing at the time you were arrested?

A 1115 West 90th, Apartment 6.

[fol. 67] Q Now, did you ever meet the witness Jones that testified here?

A Yes, I have.

Q And when did you meet him?

A I met Mr. Jones—in 1966.

Q About what time?

A This was latter part of January.

Q And where did you meet him?

A I met him at an—a fellow that live upstairs from me; Mr. Ray Jones. Apartment.

[fol. 68] Q That is in the same building?

A Yes, sir.

Q And to your knowledge is Ray Jones related to this man Jones?

A As far as I know they are cousins.

Q And it was at Ray Jones' apartment that you met this Mr. Jones?

A Yes, sir.

Q Thereafter did this Jones that testified here ever visit you at your apartment?

A Approximately three times, including the time that he was there.

Q At the time you were arrested?

A Yes.

Q Three times prior to that—

A No, three times including that. Just say twice prior to that.

Q Did he have any particular purpose in coming to your apartment?

A Well, he would, when he would, when he'd come to my apartment, he'd be looking for his cousin that lived upstairs. Whenever he wouldn't be at home, he'd come down to my place.

Q Does Ray Jones still live in that building?

A No, he doesn't.

Q He moved out? Approximately how long ago?

[fol. 69] A Approximately a month ago.

Q Now, did you make a trip to Mexico in the company of Jones?

A Yes, I did.

Q And you were in your automobile?

A Yes, sir.

Q And tell us when was that?

A This was Friday, February the 18th.

Q What time did you leave Los Angeles?

A I left Los Angeles approximately four—between four and four-thirty; something like that.

Q Have you ever been to Mexico on any other occasion?

A This was sometime ago when I lived in Louisiana; I came out here once on a visit.

Q How long ago was that?

A This was before nineteen—I came out in 1956. This was before 1956.

Q Since that visit to Mexico, had you ever been to Mexico at any time up to the date of February 18th, 1966?

A No, sir, I had not.

Q Do you know anybody in Mexico?

A No, I do not.

Q Now, did you have any discussion with Jones in regard to the purpose of your trip to Mexico before leaving Los Angeles?

[fol. 70] A Yes, I did.

Q What was that?

A Mr. Jones called me and asked me if I would pick him up because he didn't have his car.

Q Where was he?

A Mr. Jones was on 37th Street in Los Angeles.

Q Do you know what he was doing there?

A His father is supposed to live there.

Q All right.

Did you go and get him?

A Yes, I did.

Q And then what happened?

A I picked him up and—I thought he wanted me to take him out to his home, out on hundred and thirty-fifth street, but he said, well, he wanted me to take him some other place, to talk to some people or something.

Anyway, I carried him about three different places, but I didn't go in. I don't even know who he talked with.

And in the meantime, he was telling me that he have good tips on horses and dogs and things of that sort. This is what he said is his business.

And he suggested for me to come—first he asked me what was I going to do. I said, "Nothing."

So as time passed on, we conversed, and he suggested that we go to Mexico because they play dogs down here [fol. 71] at night. And that he played them frequently. And he had inside information on the dogs.

So after going on, I agreed, "Yes, let's go."

Q So you agreed to drive him to the dog races?

A Yes, sir.

Q And you did that?

A Yes, I did.

Q What happened when you arrived in Mexico?

A Well, when I arrived in Mexico, he suggested for me to park in front of the motel there. In front of the—it's a motel in front of the dog races. He suggested for me to park in the parking lot there.

Q And you did?

A Yes, I did.

Q And then what happened?

A Then we—after we—we proceeded to the race track. And I—we was approximately halfway to the place, and he asked me, say, "Do you want narcotics?" And I said, "Nar—no."

Q All right. Then what happened?

A And then I said—well, I—See, at this point I figured that he had forgotten about this particular business, this narcotics business, so I went back to my car, and I locked it because I had a camera and a coat in it, so I asked him to get me two tickets—I mean, to get me [fol. 72] a ticket, one for himself and one for me.

Well, I returned to the gate, and there was no one there, and I asked some of the people that was there, had they seen a fellow—I described his, his height and his complexion and what have you, and they said no.

So I'm here, down here; I don't know anything about playing the dogs, so then I walked back down to this, this liquor store that's in front of the race track, and at this point this Spanish fellow came up to me and asked me did I have a match. I told him no.

Q Now, just a minute.

Approximately what time did you arrive at the dog race track?

A This was approximately—I guess about seven o'clock; something like that.

Q And approximately then what time did this Spanish fellow come up to you?

A Oh, this was sometime after that.

Q About how long?

A Oh, say maybe—maybe forty-five minutes; something like that.

Q All right.

Continue. What happened when this Spanish fellow came up?

A Well, this fellow asked me for, asked me did I have [fol. 73] a match and at that particular time I didn't smoke, so I told him no, I didn't have a match.

As a matter of fact, I felt in my pocket to see if I had one, and I proceeded to my car. And this person was walking up to me and—

Q This is not the Spanish fellow?

A No, this is another Spanish fellow.

Q Oh.

A He was walking up to me, and I said, "This guy, he's up to something," so I grabbed a brick. I was going to hit him because he looked like he was going to jump on me, so this guy pulled out his pistol, and he said, "Policia, policia, policia," three times, and I started yelling, "Help, robbery; help, robbery."

So I disturbed such a commotion there until the people from the motel came out—and they grabbed me and said that—"Did you come down to make a buy?"

I said, "No, I did not."

I said, "Buy what?"

And then he went on to talk, said that I had—where was this other guy that, you know, that was with me.

So in turn they carried me down to the station. I was still under—I wasn't sure if these were the police or not, so they carried me down to the police station, and they questioned me, asked me my name; I told them. They [fol. 74] asked me have I ever used any narcotics.

I said, "No," and the—if—investigated my arm and all that, so they called in to see if I had violated some kind of law or what have you.

But, anyway, they called, supposedly, the F.B.I., and they gave—said that, you know, I didn't have no—something. So they had my personals, they had my money, they had my car keys, and what have you.

In a brown envelope.

Q All this is on Friday—

A This is on Friday—February the 18th.

Q Okay. Go ahead.

A And this officer, after questioning me, knocked me around.

He said, "Well, I'm going to give you the personals back. Will you sign this stating that you have received your property?"

I did. So this guy gave me the envelope, but it just so happened there was no money in it. And I had—oh, approximately four or five hundred dollars; something like that.

So I said, "Well, where's my money?"

He said, "Well, you can go."

I say, "I can't go any place with no money." I say, "I have a wife and a son to support."

[fol. 75] So this guy says, "Oh, we better put you back in jail," so he put me back in this place.

So, then, acted like he was going to turn around, acted like he was going to shoot me, so he said, "Well, you mean you don't want to go?"

I said, "Well, I have not committed a crime. I came down here to the dog races." I said, "People want to take my money," I say; "You can't do that."

So he says, "Well, all you got to do is come back tomorrow and they will give you your money back."

I says, "No, wherever my money go, I will have to go."

So this—also—this officer pretended that he was going to take me to the jail house to book me.

Now, this was in—The place that I'm talking about now was where they questioned me. They had no facilities there to keep me in jail. So they carried me to this place where they lock you up.

So I got out of the car, and they started up—and they say, "No, come on; get back in the car."

So I got back in the car. And they drove me around. Said, "Well, you know, what—why—don't you want to get out of this?"

And I say, "Well, I haven't done anything."

So finally he decided that he would give me my money [fol. 76] back. But he gave me half of it.

I said, "This is not all of my money."

He says, "Well, I'm letting you off light."

I said, "Light?" I said, "I haven't done anything."

Then he proceeded—then he said, "Well, okay," says, "I'm going to give your money back. Don't ever let me catch you back in Mexico again."

He gave me my money back, gave me my car. I proceeded to Los Angeles. This is now—I arrived in Los Angeles—about—say maybe four, four o'clock Saturday morning.

Q Where did you go when you arrived in Los Angeles?

A I went to my apartment.

Q Did you meet anybody else in Mexico other than the first Spanish fellow that asked you for a match and the police officers, the Mexican police officers?

A No, I did not.

Q Did you go any place else other than what you have described?

A No, I did not.

Q Do you know anybody else in Mexico?

A No, sir, I do not.

Q At any time did you give the witness that testified here a package that contained cocaine?

A No, sir.

Q In Mexico or anywhere else?

[fol. 77] A No place.

Q Did you ever have any conversation with him in which you promised to give him a hundred dollars to bring some cocaine back from Mexico?

A No, sir.

Q Did you ever give him any money?

A No, sir.

Q In Mexico or in Los Angeles or anywhere else?

A No place.

Q You were arrested then on February the 20th; is that right?

A In Los Angeles, yes.

Q About what time was that?

A This was approximately—nine something.

Q And what happened at the time you were arrested? How did that take place?

A Well, there was a knock at my door. I was asleep at the time. This girl, she was down from San Francisco

to visit with me. And this knock came, was a knock on the door, and this girl got out of bed and went to the door.

And she asked who it was. She asked me, she say, "It's the fellow says his name is"—let's see—B.J. I think. And—

Q Did you recognize who B.J. was?

A Yes, he say his name is B.J.; that stands for Bill [fol. 78] Jones.

Q All right.

A And she let him in the apartment.

* * *

[fol. 85] Q What date were you arrested in Los Angeles?

A That was February 20th.

Q What time of day was that arrest?

A This was about 9:15; yes, about 9:15 Sunday night.

Q And that was at your apartment?

A Yes, it was.

Q Tell us what happened before the arrest.

A Before the arrest there was a knock at my door and the lady that was there visiting from San Francisco, she answered the door and she asked, "Who is it?" and Mr. Jones said, "B.J." and she told me what you know, [fol. 86] what he said, and I said, "Well, let him in."

Q Then did Jones come in?

A Yes, he did.

Q And what did Jones do?

A Mr. Jones said he would like to speak with me, so I asked him—

Q Just a minute. When Jones came, did she let him in the apartment?

A Yes, she did.

Q Where were you at that time?

A I was in bed.

Q And what happened next?

A She let Mr. Jones in and he said he would like to speak with me and I told him he could come back in the bedroom. He said, "No, I want to speak to you up here."

I was under the impression—

Q Pardon me. What do you mean by "up here."

A Up in the living room.

Q Oh, all right.

A And I told him, "Well, no, you can come on back; she have her clothes on," and he said, "No, I want to speak to you up here, so I said, "Okay."

Q Again, you mean the living room.

A Yes, in the living room.

Q So then what happened?

[fol. 87] A I went up and I was—

Q What do you mean by "up"?

A I went to the living room.

Q All right.

A And I was telling him about the incident that I had in Mexico.

Q What do you mean by "incident"?

A About them picking me up and what they did to me and what-have-you.

Q Now, prior to Mr. Jones coming to your apartment, did you have a telephone conversation with Mr. Jones?

A Yes, I did.

Q When did that occur approximately?

A I would say about 4:00 or 5:00 o'clock, something like that.

Q And what was the subject of that conversation?

A Well, he say who he was. I was excited and telling him about what happened to me. This was the main thing.

Q You mean, what happened to you?

A In Mexico.

Q In Mexico; that is, your arrest and so forth.

A Yes, sir.

Q And in that conversation, did you make a statement to Jones, "Did you have any trouble coming across the line?" or something to that effect?

[fol. 88] A Well, I'm not sure if I did or not, but it's possible I did because I wanted to know what happened to him, and they gave me such a bad time down there.

Q I see. In that conversation, did you mention the word, "package"?

A No, I did not.

Q Do you know if Mr. Jones mentioned the word "package"?

A No, I do not.

Q You don't know whether he did or not?

A No, I don't.

Q In that conversation that you had with Jones, were there any remarks about the hundred dollars that you were supposed to pay?

A No.

Q The rest of the conversation—what was that about?

A Just about my incident in Mexico.

Q Did Jones tell you in that conversation that he was coming to your apartment?

A This I can't remember, if he did or not.

Q Do you know what day the conversation was, the telephone conversation?

A This was on a Saturday.

I would like to retract that. It was on a Sunday.

Q This was the same day as your arrest?

A Yes.

[fol. 89] Q And about how long before the arrest was this conversation?

A How long?

Q How long before the arrest, prior to the arrest?

A About four hours.

Q When Jones arrived at the apartment, how long after he arrived did the agents enter the apartment?

A I would say from five to eight, ten minutes.

Q And during that time that Jones was in the apartment before the agents entered, did he mention anything about the hundred dollars that you were supposed to pay him?

A No, he did not.

Q Did you say anything about a hundred dollars you had for him?

A No, I did not.

Q Did you have the money in the apartment at that time?

A Yes, sir.

Q How much money?

A Approximately four or five hundred dollars.

Q That was the same money you had with you when you went to Mexico?

A Yes, sir.

Q Now, this girl that was in the apartment with you at that time—was she in the living room with you also?

A No, sir.

[fol. 90] Q Did something happen that caused her to leave the living room?

A Yes. Well, when Mr. Jones came into the apartment, well, from what he said, for me to come up to the living room, well, she just, you know, stayed back in the bedroom.

Q Did Jones ask her to go back in the bedroom?

A No, she went voluntarily.

Q When the agents entered the apartment, did anything happen to Jones?

A Yes. When they came in, they took Mr. Jones out of sight immediately, and—

Q Did they put handcuffs on him?

A No, they did not.

Q Then what happened?

A They took him out and they stayed out for a little while and then they brought him back in.

Q And then they went and got this package.

A Yes, sir.

Q Did they have to search around the apartment any to find it?

A I believe they looked in my kitchen and the trash can, and what-have-you, drawers and what-have-you.

Q At any time did you have any agreement with Jones to have him bring back some cocaine from Mexico?

A No, sir.

[fol. 91] Q Did you give him any money for the purpose of purchasing cocaine in Mexico?

A No, sir.

Q At the time that Jones was in the apartment prior to the arrest, did he appear to you to be excited?

A No, sir.

Q Did Jones at any time deliver any package to you prior to the arrest?

A No, sir.

MR. BRADLEY: I have no further questions.

THE COURT: Let me ask a couple of questions.

BY THE COURT:

Q As the officers came into the apartment, what did they do immediately or thereafter?

A I have to start from the beginning. The officers came into the apartment with their guns drawn and I thought somebody was going to shoot me, and they grabbed Mr. Jones and rushed him outside, and hung me back in a corner and just, things happened so fast, I just—

Q When in relation to the time that they came in did they find the package under the cushion?

A I would say this was maybe five minutes, maybe.

Q Did they find it under the cushion before Jones came back or after he came back?

A They found it after they brought Mr. Jones back.
[fol. 92] THE COURT: All right; go ahead.

CROSS EXAMINATION

BY MR. GOTT:

[fol. 97] Q What is your phone number there at that location where you were arrested?

A 755-1800.

Q Whose number is 758-9794?

A I don't know. It could possibly have been a number that I had prior to the 755-1800.

Q Well, you do recall specifically talking to Mr. Jones [fol. 98] approximately four hours prior to your arrest on the telephone.

A Yes, sir.

Q And he told you at that time that he was in San Diego, did he not?

A No, sir; I didn't hear him say that.

[fol. 107]

GEORGE R. GORE,

called as a witness by the plaintiff, was duly sworn by the Court, and testified as follows in rebuttal:

THE COURT: Your full name, please?

THE WITNESS: George R. Gore, G-o-r-e.

DIRECT EXAMINATION

BY MR. GOTT:

Q Who do you work for, Mr. Gore?

A United States Customs Agency Service.

Q In what capacity?

A Supervising Customs Port Investigator.

Q Were you so employed on or about February 19-20, 1966?

A Yes, sir, I was.

Q Did you participate in a phone call, a phone call to this defendant or or about those dates?

A Yes, sir, I did.

Q Will you tell us about when the phone call occurred and exactly what happened?

A The first phone call was placed approximately 2:45 a.m. on February 20, 1966 in Los Angeles.

Q And where was that placed from?

A It was placed from the Jaycee garages on Winslow in Los Angeles.

[fol. 108] Q What were you doing at the Jaycee Garage on Winslow?

A I had taken Mr. Jones, along with Customs Port Investigator White, to Los Angeles and met with the Los Angeles agents.

Q Was this garage someplace where Customs cars are kept, or—

A Yes, correct.

Q Do you know now what number you dialed?

A Yes, sir, I do.

Q Did you dial it or did someone else dial it?

A Mr. Jones dialed it.

Q Did he dial it in your presence?

A Yes, in my presence and also the presence of another agent.

Q And what is that number, if you know?

A 758-9794.

Q Is this the same number that was dialed on a later occasion?

A Yes, sir.

Q And on some later occasion did the defendant answer the phone?

A Yes, sir, that was at approximately 3:00 p.m. on February 20, 1966.

Q Where did you get this number?

A This number was on a small card that was in the presence of Mr. Jones when he was arrested at the port [fol.109] of entry, San Diego.

Q It was on Mr. Jones' person?

A That's right.

Q Did it have a name on it?

A Just Johnny, sir.

Q Now, tell us what happened when you first dialed this number at 2:00 o'clock in the morning on the 20th?

A There was no answer, sir.

Q How many times after that was the number called in your presence and over what period of time?

A Only one other time in my presence. However, there had been three other phone calls between the one at 2:00 o'clock and the one at approximately 5:00 a.m. in the morning.

Q And was there any answer?

A No, sir.

Q Now, when did you next attempt to call, if you did?

A That wasn't until the following afternoon at approximately 3:00 p.m., the afternoon of the same day.

Q Where was that call placed from?

A From the Narcotics Division of the San Diego Sheriff's Office.

Q And what number was called then, if you know?

A 758-9794.

Q In Los Angeles?

A Yes, sir.

[fol. 110] Q And who dialed that number?

A I dialed it myself, sir.

Q And did someone answer?

A Yes, sir.

Q And what was said? Strike that.

Who all was present on your end of the conversation when the conversation took place?

A There was myself, Mr. Jones, and a Sheriff's Narcotics officer who was assisting us in using his recorder and his tape.

Q What was said on that conversation?

A Mr. Jones related to the party on the other end that he was still in San Diego and that he still had his thing, and the party on the other end asked if he had any trouble getting through the line. Mr. Jones said, "No." He said, "Well, I had a little bit of trouble down there, but I'll tell you about that when I see you."

Q Who said this?

A This was the party on the other end of the line.

Q Was it a male or female?

A Male.

Q Did Mr. Jones mention any name to the party on the other end when he first answered?

A Yes, he called him Johnny and told him this was B.J.

Q And tell me again, now, as nearly as you can recall about what time this conversation took place.

[fol. 111] A It was approximately 3:00 p.m.

Q And how long was it later that you arrived at the apartment in Los Angeles?

A Approximately 8:15 p.m.

Q Was anything further said in this conversation?

A Yes, sir. Mr. Jones asked the party on the other end if he was going to be home and he said, "Yes," and he said, "All right; I'm on my way up. I'll see you in a little while."

MR. GOTT: Nothing further.

* * *

[fol. 112]

DONALD R. CARTER,

called as a witness by the plaintiff, was duly sworn by the Court, and testified in rebuttal, as follows:

THE COURT: Your full name, sir?

THE WITNESS: Donald R. Carter.

DIRECT EXAMINATION

BY MR. GOTT:

Q Mr. Carter, who do you work for?

A I am employed by the United States Customs
[fol. 113] Agency Service.

Q In what capacity?

A Customs Port Investigator.

* * *

[fol. 114] BY MR. GOTT:

Q Mr. Carter, were you present at this address of Johnny Sabbath's there on the 20th of February, 1966 at the time he was arrested?

A Yes, sir.

Q Will you tell us when you first saw the man and what happened after that?

A My first contact or first visual contact with Mr. Sabbath was in the apartment where he resided. Agent Hopkins and I both entered the apartment approximately at the same time. Agent Hopkins was right in front of me, and I was directly in back of him. I observed Mr. [fol. 115] Sabbath seated on a couch where Agent Hopkins had placed him in the diagram to my left here.

At the time that I saw Mr. Sabbath, his right hand was in the cushion, underneath the cushion of the particular couch he was sitting on, and at the time that I entered, I observed him bring his hand out from underneath the cushion and place it on his right knee.

Mr. Jones was seated in the chair, also in the same diagram.

Q What further happened?

A I took Mr. Sabbath off the couch, placed him against the wall which was approximately where the chair where

Mr. Jones was sitting, just to the left of Mr. Jones' chair, placed handcuffs on him, and then turned Mr. Sabbath around where I observed Mr. Henry retrieve a rubber contraceptive from the cushion of the couch where Mr. Sabbath was sitting.

Q Now, did you have anything in mind in moving him away from the couch?

A Yes, sir, I didn't know particularly what was underneath the cushion. My feeling was that possibly it could have been a weapon of some type.

Q You were watching that couch when you moved him away?

A Yes, sir.

Q How soon was the package removed?

A In a matter of thirty seconds.

[fol. 116] Q Now, what further happened concerning this defendant, or Mr. Jones, if anything?

A I assisted—correction—Mr. Sabbath was placed in a chair. Mr. Jones—during this time when I had Mr. Sabbath, I don't recall what other officer, but one of the other federal officers which assisted us in the case had taken Mr. Jones approximately the same time I had Mr. Sabbath and placed him in handcuffs. Both subjects were then seated in the front room of the apartment where a physical search of the apartment was taking place at this time by numerous officers.

Q Were there any arrests made at that time?

A Mr. Sabbath and Mr. Jones were both placed under arrest.

Q Maybe I'm confused. I thought Mr. Jones was already under arrest.

A He was at the time, but again he was placed under arrest in the company of Mr. Sabbath.

Q Why was that?

A Mainly for Mr. Jones' protection, possibly at a later date thinking—if I may clarify myself—a lot of time, to—

Q Wait a minute. Let me change my—

You wanted Mr. Sabbath to think you were arresting Mr. Jones at that time, too.

A That is correct, yes.

Q To make it look good.

[fol. 117] A Yes.

Q Now, did Mr. Jones leave the apartment at that time, or in the relatively near future?

A No, Mr. Jones was in the apartment, oh, for a number of minutes. I don't know how long, but he was there throughout most, the whole procedure of the searching of the apartment. I never observed him to leave the apartment the whole time I was there and I was there close to an hour, I guess.

Q What did you find in the search, if anything, of the apartment; I'm talking about.

A Returning from the bedroom, there was a closet just directly off the bedroom. In the closet numerous articles of clothing—men's apparel, some women's apparel—I found a box containing small rubber ballons. In the box also were aluminum foil cut into squares approximately one and a half, two-inch squares.

Also in this box was small rubber bands. Also found in the kitchen, I believe in the bar, luncheon bar-type thing, was another large box containing numerous small rubber ballons.

Again in the kitchen was found more aluminum foil squares cut in the small inch and a half, two-inch squares, in a stack, plus in the bedroom I found in between the mattress and innersprings approximately \$500 in cash, and in the dresser drawer in the bedroom I found approximately 300 Dexamyl tablets or spatulas which were [fol. 118] not in the prescription bottles, just in the box.

Q Now, back to these squares of aluminum, ballons, and rubber bands, in your experience, being qualified as an expert in the narcotic field, what does this mean to you?

A The presence of aluminum foil cut in that particular fashion, being about an inch and a half or two-inch squares, it is my opinion that these squares were to be used to contain, put a narcotic substance in. They are folded in a particular way as to not spill the substance that is placed in these little aluminum foil containers, which would contain approximately five milligrams of narcotics generally. The street language would be a cap, what they would call a cap, a five milligram capsule. This

is folded and sometimes a rubber band is wrapped around the particular piece of aluminum foil to also keep it intact.

Q What about the balloons?

A The balloons are also used by numerous narcotic dealers to conceal narcotics in. I have seen them cut the bottom portion of the balloon off leaving a piece of the balloon approximately an inch long. The narcotic is placed in there. When it is to be taken out—it is rolled, the rubber band is placed around it to hold it from the narcotics falling out—and when it is to be taken out, they take a portion of the balloon, place it on their finger and peel the balloon down making the substance fall out [fol. 119] on whatever they are going to put it onto, a piece of paper. This way they also get all the narcotics inside the balloon off.

Q These aluminum foil sections or squares—are they used for any particular kind of narcotics?

A Generally cocaine.

Q Now, was the aluminum foil, rubber bands, and balloons all in the same box?

A Yes, sir.

[fol. 121] MR. BRADLEY: Your Honor, I would like to place Mr. Sabbath back on the stand.

THE COURT: All right. Certainly.

JOHNNY SABBATH,

the defendant herein, was called as a witness in his own behalf, and having previously been sworn, testified in surrebuttal as follows:

DIRECT EXAMINATION

BY MR. BRADLEY:

Q Mr. Sabbath, will you again tell us your business [fol. 122] of occupation.

A My business is maintenance—carpet cleaning, painting, window cleaning, et cetera.

Q You work for yourself?

A Yes, sir.

Q You heard the testimony about some balloons being found in your apartment?

A Yes, sir.

Q And do you know how many balloons you had?

A No, I don't, as far as the number is concerned, but I bought the child—they come in bags, 29 cents.

Q These balloons were for your child?

A Yes, sir.

Q You also heard some testimony here by Mr. Carter who qualified as an expert or it was stipulated he was an expert with regard to some pieces of tinfoil found in your apartment.

A Yes, sir.

Q Will you tell the jury what those pieces of tinfoil are used for?

A Yes, sir, I will. I clean carpets and when I clean the carpet, naturally I have to have something to go under the legs of the couches and chairs and I have these cut and when I clean the carpet I place the carpet on top of this and this will prevent the chair or the leg to rust the carpet.

Q In other words, to prevent the cleaning material [fol. 123] put on the rugs from getting on the furniture?

A Yes, sir.

Q And you had some rubber bands there. What were they for?

A You put—in other words, this is the leg of a chair. You put the foil under the chair and you wrap it around and let it stay on for three days, and the carpet should dry within three days and then you take this off and there is no spot on the carpeting.

MR. BRADLEY: I have nothing further.

THE COURT: All right.

* * *

[fol. 124]

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

No. 36238-Criminal

[File endorsement omitted]

UNITED STATES OF AMERICA, PLAINTIFF

vs.

JOHNNY SABATH, DEFENDANT

VERDICT—June 16, 1966

We, the Jury in the above entitled cause, find the defendant JOHNNY SABATH, Guilty as charged in count 1 of the Indictment; and Guilty as charged in count 2 of the Indictment.

/s/ Raymond E. Smith
Foreman of the Jury

Dated: June 16, 1966
At San Diego, California.

[fol. 125]

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION

No. 36238-Criminal

UNITED STATES OF AMERICA

v.

JOHNNY SABBATH

JUDGMENT AND COMMITMENT—July 25, 1966

On this 25th day of July, 1966 came the attorney for the government and the defendant appeared in person and¹ by counsel, John Bradley.

IT IS ADJUDGED that the defendant has been convicted upon his plea of² not guilty and a verdict by a Jury of guilty of the offense of smuggling and concealing cocaine, in violation of 21 USC 174, as charged in Counts 1 and 2 of the Indictment in two counts, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of⁴ ten (10) years on each of Counts 1 and 2 to run concurrently.

IT IS ADJUDGED that⁵ on motion of the U.S. Attorney the bond of this defendant is exonerated.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States

Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Fred Kunzel
FRED KUNZEL
United States District Judge.

Filed July 25, 1966
JOHN A. CHILDRESS, Clerk

By /s/ Hal H. Kennedy,
HAL H. KENNEDY,
Deputy Clerk.

[fols. 126-127]

MR. JOHNNY SABBATH, IN PRO PER
1170 East 68th Street
Los Angeles, California
Telephone: 5887095

DEFENDANT, IN PRO PER

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT
CENTRAL DIVISION

Case Number: 36238

[File endorsement omitted]

UNITED STATES OF AMERICA, PLAINTIFF

vs.

JOHNNY SABBATH, DEFENDANT

NOTICE OF APPEAL—filed July 25, 1966

TO: The Clerk of the above-entitled Court, to the above-named Plaintiff, and to the Office Of The U. S. Attorney, Department Of Justice:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE AND NOTICE IS HEREBY GIVEN that the Defendant in the above-entitled action hereby Appeals to the United States Circuit Court Of Appeals, Non-Circuit, from the JUDGMENT of conviction herein entered on the 17th day of May, 1966, for violation of Section 174, of Title 21, US Code Annotated, and from the whole thereof.

Dated: This 25th day of July, 1966.

/s/ Johnny Sabbath
Defendant, In Pro Per

IT IS ORDERED THAT THE DEFENDANT HEREIN BE RELEASED UPON THE POSTING OF \$10,000 BOND, PENDING APPEAL HEREIN.

/s/ Fred Kunzel
Judge, Federal Court

[fol. 128]

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 21,353

JOHNNY SABBATH, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court
for the Southern District of California
Central Division

OPINION—June 27, 1967

Before: CHAMBERS and BARNES, Circuit Judges; and
SMITH,* District Judge.

SMITH, District Judge:

Defendant, convicted on one count of importing cocaine, and on a second count of concealing and facilitating the transportation of the same cocaine in violation of 21 U.S.C. § 174, appeals from the judgment of conviction, asserting as error the admission of evidence seized at the time of his arrest.

Unless made as an incident of a lawful arrest the seizure was invalid on fourth amendment grounds because it was accomplished as the result of a search without a warrant. The arrest in turn depends upon whether the arresting officers had reasonable cause to believe that the defendant was committing, or had committed a felony.¹

[fol. 129] The facts are these: On February 19, 1966, one William Jones was searched at the Mexican border and found to be in possession of a condom containing

* Russell E. Smith, United States District Judge, District of Montana, sitting by designation.

¹ 26 U.S.C. § 7607; *Spurlock v. United States*, 9 Cir. 1961, 295 F. 2d 387.

about an ounce of cocaine. He told the customs officers that he had been taken to Mexico by defendant in defendant's car and promised \$100.00 if he would bring the cocaine, which defendant gave to him, back to the United States. Jones had in his possession a card with the word "Johnny" and the number "758-9794", written upon it. On the next day a Customs Investigator dialed Los Angeles 758-9794 whereupon Jones talked over the telephone to a male at the other end of the line whom he addressed as Johnny and to whom he identified himself as "B. J." Jones stated that he still had his thing. The person at the other end asked if Jones had had any trouble getting through the line and Jones said "no". The party at the other end then said, "Well, I had a little trouble down there but I'll tell you about that when I see you." Jones asked the other person if he was going to be home and receiving an affirmative answer said, "All right, I'm on my way up. I'll see you in a little while." The federal officer then placed a radio transmitter device on Jones and accompanied him to defendant's apartment. Jones entered the apartment with the cocaine and a customs agent by radio receiver monitored the subsequent conversation.² Because of the interference from a phonograph which was running in the apartment, only parts of the conversation were heard. The officer did hear a woman answer the door and heard Jones ask if Johnny was in. The officer heard the female voice respond, "Yes, just a minute"; heard a male voice saying "Did you have any problems getting through the line"; and heard Jones respond "No" and something about a package. In the meantime Jones delivered the cocaine to defendant. Then the agent knocked, waited a few seconds and then entered the apartment through the closed but unlocked door. Defendant, who was seated on a couch, put his hands beneath the cushions and then pulled them out. Defendant was then arrested. The officer searched the couch at the point where defendant's hands had been and found the condom containing the cocaine. A subsequent search of the apartment disclosed a quantity of tinfoil squares and balloons.

² The admission of the evidence obtained by the transmitting and receiving equipment was not made the basis of an objection in the trial court nor was it specified as error or argued to be error in this court.

[fol. 130]

Information from an informer not known to be reliable does not constitute probable cause for an arrest without a warrant. If, however, by the time of the arrest there has been such corroboration of the informer's information to warrant a man of reasonable caution in the belief that an offense has been or is being committed, then probable cause does exist.³ Each case turns largely on its own facts. By the time the arrest was made and apart from anything said by Jones, the officer knew that Jones had brought narcotics over the border, that he had a card with defendant's telephone number in his possession, that defendant knew Jones and was willing to receive him in his home, that defendant knew that Jones had been across the border, that defendant himself had been near the border and that Jones and defendant had some mutual interest in a thing or package. These facts are sufficient to distinguish this case from *Castillon v. U.S.*, 9 Cir. 1962, 298 F. 2d 256, and *Wong Sung v. U.S.*, 9 Cir. 1961, 288 F. 2d 366, rev'd 371 U.S. 471 (1963). There was probable cause.

Defendant further contends that even if there was probable cause for the arrest, the failure of the arresting officers to identify themselves and request permission to enter, made the arrest unlawful and tainted the search. It is settled that the method of entry into a dwelling, even where there is a power to arrest, may taint the arrest and the subsequent search. *Miller v. United States*, 357 U.S. 301 (1958).

It is not clear just what law sets the standards which govern an officer's entry into a dwelling for the purpose of making an arrest. When the arrest is made by a state officer for a federal offense, it has been said that the arrest is to be tested by the law of the state.⁴ Some courts

³ *Rodgers v. U. S.*, 9 Cir. 1959, 267 F. 2d 79.

⁴ *United States v. DiRe*, 332 U.S. 581 (1948) where the arrest was made by a state officer accompanied by an O.P.A. investigator who had no power of arrest. *Johnson v. United States*, 333 U.S. 10 (1948), where the arrest was made by a Seattle police officer. *Williams v. United States*, 9 Cir. 1959, 273 F. 2d 781, where the

relying on *United States v. DiRe*, 332 U.S. 581 (1947), have held that arrests by federal officers for federal offenses, in the absence of a federal statute, are governed by state law.⁵ There is no statute which expressly provides for the method of entry by federal officers who arrest without a warrant. Section 3109 of Title 18 U.S.C. does prescribe the method of entry in the execution of a search warrant,⁶ and we believe that the effect of *Miller v. United States*, supra, is to make this statute applicable to arrests by federal officers for federal offenses.⁷ So we treat the problem as one of federal law.⁸

If the entry made by opening a closed door without the necessary statutory formality was a breaking, then the federal law was violated and the arrest was unlawful. We turn to that problem:

The case⁹ holding that any entry is a breaking unless there is permission has been repudiated in this Circuit, and it is the rule here that an entry through an open door is not a breaking, even though there be no permission.¹⁰ An entry gained by ruse or deception unassociated with force is not a breaking.¹¹ Where officers without the

arrest was made by a California police officer. *Miller v. United States*, 357 U.S. 301 (1958), may cast some doubt upon this language even as to state officers. See the dissenting opinion.

⁵ *Coplon v. United States*, D.C. Cir. 1951, 191 F. 2d 749; *Janney v. United States*, 4 Cir. 1953, 206 F. 2d 601; *United States v. Perez*, 2 Cir. 1957, 242 F. 2d 867.

⁶ The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant. 18 U.S.C. § 3109.

⁷ We realize that *Miller* dealt with an arrest by an officer of the District of Columbia, but we believe that the result was based on § 3109.

⁸ *Dickey v. United States*, 9 Cir. 1964, 332 F. 2d 773.

⁹ *Keiningham v. United States*, 109 U.S. App. D.C. 272, 287 F. 2d 126, 1960.

¹⁰ *Ng Pui Yu v. United States*, 9 Cir. 1965, 352 F. 2d 626.

¹¹ *Leahy v. United States*, 9 Cir. 1959, 272 F. 2d 487.

authority of the tenant secure a pass key from the landlord and enter by means of the key, such is a breaking.¹²

We told that an entry made through a closed but unlocked door is not a breaking.¹³ We realize that the distinction between using a door knob to turn a latch, and [fol. 132] using a key obtained without permission to turn a bolt, may be slight. It may be that a door which is locked does give more warning of a desire for privacy than one which is not locked; but, in any event, we are of the opinion that the word "break" has been taken far enough from the connotations of force which usually accompany it,¹⁴ and we are not willing to take it any further for the purpose of enlarging a rule of exclusion. The arrest was lawful.

It is urged that the district court erred in admitting evidence in rebuttal which concededly might have been admitted in the government's case in chief. This is a matter within the discretion of the trial court,¹⁵ and under the circumstances here we find no abuse of discretion.

The judgment appealed from is affirmed.

¹² *Munoz v. United States*, 9 Cir. 1963, 325 F. 2d 23.

¹³ *United States v. Bowman*, D.D.C. 1956, 137 F. Supp. 385. This result is in accord with that reached in *Williams v. United States*, supra, note 4, although as indicated that case was decided on the basis of California law.

¹⁴ *Webster's Third New International Dictionary* (1966).

¹⁵ *United States v. Crowe*, 7 Cir. 1951, 188 F. 2d 209.

[fol. 133]

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 21,353

JOHNNY SABBATH, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

JUDGMENT—Filed and entered June 27, 1967

APPEAL from the United States District Court for the Southern District of California, Central Division.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

[fol. 134]

SUPREME COURT OF THE UNITED STATES

No. —, October Term, 1967

JOHNNY SABBATH, PETITIONER

vs.

UNITED STATES

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT
OF CERTIORARI—July 28, 1967

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 26, 1967

/s/ Byron R. White
Associate Justice of the
Supreme Court of the
United States

Dated this 28th day of July, 1967

[fol. 135]

SUPREME COURT OF THE UNITED STATES

No. 566 Misc., October Term, 1967

JOHNNY SABBATH, PETITIONER

v.

UNITED STATES

On petition for writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—December 11, 1967

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 898 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.